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6. Taxation (§ 764*)—Tax Deeds—Contents—Description.—A tax deed failing to set forth the description of the property by metes and bounds is fatally defective, since Acts 1845-46, c. 6, § 6, requires that the clerk making the deed shall specify the metes and bounds of the land and the names of owners of adjoining tracts.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 1519-1522; Dec. Dig. § 764.* 13 Va.-W. Va. Enc. Dig. 169.]

7. Records (§ 18*)—Destruction—Title to Land—Evidence—Sufficiency.—Evidence held to show conveyance by former owner of land prior to conveyance under which plaintiff claims in spite of the destruction of records during the Civil War.

[Ed. Note.—For other cases, see Records, Cent. Dig. §§ 36-42; Dec. Dig. § 18.* 11 Va.-W. Va. Enc. Dig. 693.]

8. Wills (§ 742*)—Conveyance by Devisees—Title of Grantors.—Where plaintiff claims title by deed from three of five children, who took under a will not specifically naming the property which would therefore pass under a residuary clause, the title is defective, since all the children did not join in the conveyance.

[Ed. Note.—For other cases, see Wills, Cent. Dig. §§ 1900-1906; Dec. Dig. § 742.* 13 Va.-W. Va. Enc. Dig. 885.]

ROLLER v. CATLETT.

Nov. 11, 1915. Rehearing Denied Nov. 26, 1915.

[86 S. E. 909.]

1. Trusts (§ 169*)—Trustees—Substitution of Trustee.—Acts 1910, c. 355, providing that the court, on the death, removal, declination, or resignation of a trustee, may appoint a trustee or trustees in place of the trustee named in the instrument, applies only where the powers of the trustee are not discretionary or dependent upon personal confidence, but the application of the statute does not depend upon whether the trustee has the legal title to the trust property.

[Ed. Note.—For other cases, see Trusts, Cent. Dig. §§ 222-224; Dec. Dig. § 169.*]

2. Judgment (§ 714*)—Res Adjudicata—Defenses—Validity.—The defense of res adjudicata is not available to one in whose favor the former judgment ran as to seven thirtieths of a given property, where the instant action involves the other twenty-three thirtieths of the property.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. §§ 1240, 1242, 1243; Dec. Dig. § 714.*]

3. Judgment (§ 689*)—Res Judicata—Conclusiveness.—A judgment in a former action on the same subject-matter between the defendant

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

and a plaintiff trustee for whom the present plaintiff has been substituted is res adjudicata in the instant action.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. § 1212; Dec. Dig. § 689.*]

4. Taxation (§ 728*)—Tax Sales—Title.—Where pretended title is derived by a treasurer's deed on a sale for taxes assessed against persons having no title to the land, the purchaser under the tax sale takes no title.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 1457-1461; Dec. Dig. § 728.*]

5. Appeal and Error (§ 1010*)—Findings—Evidence to Support.—Where the court finds against one party in spite of inconclusive evidence in his favor, the court on appeal must adopt the theory of evidence tending to support the judgment.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 3979-3982, 4024; Dec. Dig. § 1010.*]

Error to Circuit Court, Rockingham County.

Action by Charles Catlett, trustee, against John E. Roller and others. From a judgment for plaintiff, after severance as to the named defendant, said defendant brings error. Affirmed.

John E. Roller, of Harrisonburg, and *Walton & Walton*, of Woodstock, for plaintiff in error.

Bumgardner & Bumgardner, of Staunton, and *Chas. A. Hammer*, of Harrisonburg, for defendant in error.

BLOSE *v.* BLOSE.

Nov. 11, 1915. Rehearing Denied Nov. 27, 1915.

[86 S. E. 911.]

1. Deeds (§ 19*)—Rescission—Part Performance of Agreement.—Where a deed from parents to their child provides, as a part of the consideration, that the child shall maintain them from the proceeds of the land conveyed, and, as a further consideration, for a substantial and reasonable sum of money for the land, the deed will not be revoked for failure of consideration, in that the grantee fails to maintain the grantors.

[Ed. Note.—For other cases, see Deeds, Cent. Dig. § 38; Dec. Dig. § 19.*]

2. Abatement and Revival (§ 8*)—Grounds—Other Action Pending.—Where at the time of bringing an action to rescind a contract there was pending another action to compel specific performance of a contract, and the court in that action could administer all the relief to

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